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COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II

CIVIL ACTION No. 21-CI-00645

TIA TAYLOR, *et al.*,

PLAINTIFFS

vs.

KKR & CO., L.P. *et al.*,

DEFENDANTS

ORDER

This matter is before the Court upon the KKR Parties' *Motions to Dismiss*; David Peden's *Motion to Dismiss*; William Thielen's *Motion to Dismiss*; R.V. Kuhns & Associates, Inc.'s *Motion to Dismiss*; David Eager's *Motion to Dismiss*; T.J. Carlson's *Motion to Dismiss*; Cavanaugh Macdonald Consulting, LLC's *Motion to Dismiss*; Brent Aldridge's *Motion to Dismiss*; PAAMCO Prisma, LLC, Jane Buchan, Prisma Capital Partners LP, Girish Reddy, and Michael Rudzik's (collectively, "Prisma/PAAMCO Defendants") *Motion to Dismiss*; PAAMCO Prisma, LLC, Jane Buchan, Prisma Capital Partners LP, Girish Reddy, Michael Rudzik, Blackstone Alternative Asset Management L.P., Blackstone Inc., Steven A. Schwarzman, J. Tomilson Hill, R.V. Kuhns & Associates, Inc., Ice Miller, LLP, and William Cook's *Consolidated Motion to Dismiss*; Ice Miller LLP's *Motion to Dismiss*, Blackstone Alternative Asset Management L.P., Blackstone Inc., Stephen A. Schwarzman, and J. Tomilson Hill's (collectively, "Blackstone Defendants") *Motion to Dismiss*; and Adam Tosh's *Motion to Dismiss*. This action was called before the Court on Thursday, October 26, 2023. Upon review of the parties' briefs and papers, and being sufficiently advised, the Court hereby **DENIES** KKR Parties' *Motions to Dismiss*;

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GRANTS in part, DENIES in part David Peden’s *Motion to Dismiss*; **GRANTS in part, DENIES in part** William Thielen’s *Motion to Dismiss*; **GRANTS** R.V. Kuhns & Associates, Inc.’s *Motion to Dismiss*; **GRANTS in part, DENIES in part** David Eager’s *Motion to Dismiss*; **GRANTS in part, DENIES in part** T.J. Carlson’s *Motion to Dismiss*; **GRANTS** Cavanaugh Macdonald Consulting, LLC’s *Motion to Dismiss*; **GRANTS in part, DENIES in part** Brent Aldridge’s *Motion to Dismiss*; **GRANTS in part, DENIES in part** PAAMCO Prisma, LLC, Jane Buchan, Prisma Capital Partners LP, Girish Reddy, and Michael Rudzik’s (collectively, “Prisma/PAAMCO Defendants”) *Motion to Dismiss*; **DENIES** PAAMCO Prisma, LLC, Jane Buchan, Prisma Capital Partners LP, Girish Reddy, Michael Rudzik, Blackstone Alternative Asset Management L.P., Blackstone Inc., Steven A. Schwarzman, J. Tomilson Hill, R.V. Kuhns & Associates, Inc., Ice Miller, LLP, and William Cook’s *Consolidated Motion to Dismiss*; **GRANTS** Ice Miller LLP’s *Motion to Dismiss*, **DENIES** Blackstone Alternative Asset Management L.P., Blackstone Inc., Stephen A. Schwarzman, and J. Tomilson Hill’s (collectively, “Blackstone Defendants”) *Motion to Dismiss*; and **GRANTS** Adam Tosh’s *Motion to Dismiss*.

STANDARD OF REVIEW

Under Kentucky law, when a court considers a motion to dismiss under Civil Rule 12.02, “the pleadings should be liberally construed in a light most favorable to the plaintiff and all allegations taken in the complaint to be true.” *Gall v. Scroggy*, 725 S.W.2d 867, 869 (Ky. Ct. App. 1987) citing *Ewell v. Central City*, 340 S.W.2d 479 (Ky. 1960). “The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim.” *Mims v. W.-S. Agency, Inc.*, 226 S.W.3d 833, 835 (Ky. Ct. App. 2007) quoting *James v. Wilson*, 95

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S.W.3d 875, 883-84 (Ky. Ct. App. 2002). In *D.F.Bailey, Inc. v. GRW Engineers, Inc.*, 350 S.W.3d 818 (Ky. Ct. App. 2011), the Kentucky Court of Appeals discussed a trial court’s standard of review when ruling on a motion to dismiss. “[T]he question is purely a matter of law. [...] Further, it is true that in reviewing a motion to dismiss, the trial court is not required to make any factual findings, and it may properly consider matters outside of the pleadings in making its decision. *Id.* at 820 (internal citations omitted).

ANALYSIS

I. Tier 3 Trust Beneficiary Plaintiffs Have Standing

Due to the nature of the Tier 3 Trust Plaintiffs’ pension and insurance benefits, and the structure of their individual retirement accounts held within the Trusts, they have constitutional standing under the rationale of *Overstreet v. Mayberry*, 603 S.W.3d 244 (Ky. 2020) as well as a long line of federal ERISA decisions — pre- and post-*Thole v. U.S. Bank N.A.*, 140 S. Ct. 1615 (2020). These authorities hold that participants in defined contribution pension plan trusts, whose benefits are not fixed in amount but rather vary based on investment returns, plan expenses and fiduciary stewardship, have standing to sue to remedy plan/trust misconduct. The Tier 3 members participate in a “Hybrid Plan,” which incorporates the variable benefit feature of defined contribution plans, meaning the participants are impacted by better or worse investment results

The Court believes that Plaintiffs are correct – this is a direct suit, not a derivative suit. Tier 3 members are situated differently than the Tier 1 and Tier 2 members. Plaintiffs therefore meet the standards to survive a Motion to Dismiss.

Under long-standing common law of trusts, the beneficiaries own the claim against the trustee when the trustee commits a breach of trust. The trustee does not own the claim

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against himself and his co-conspirators. The beneficiaries of the Pension and Insurance Trusts, whose interests the Trustee is supposed to protect, can pursue directly a claim against third parties who participate in, or aid and abet, that Trustee in its breach of trust. *See, e.g.*, Restatement (Second) of Trusts §326 (“A third person who ... has notice that the trustee is committing a breach of trust and participates therein is liable to the beneficiary for any loss caused by the breach of trust.”); 76 AM. JUR. 2D TRUSTS §603 (“a trust beneficiary may sue third persons who, for their own financial gain or advantage, induced the trustee to commit a breach of trust, participated with, aided or abetted the trustee in such a breach of trust, or while knowing of the breach of trust, received and retained trust property from the trustee”).

The “occupy the field” term of art is misplaced. There is no preemption issue in this case. Furthermore, the Court does not believe the claims asserted by the Tier 3 members are duplicative of the Attorney General’s claims. A judgment would not preclude the other. The two separate actions are subject to different defenses, procedural and substantive.

The fact that the Tier 3 case and the AG’s case are similar in some respects should not come as a surprise. The two cases are not entirely duplicative; they are different and distinct in important respects. First, the parties are not the same. The case originally brought by the *Mayberry* plaintiffs was expressly derivative, meaning that the Kentucky Public Pension Authority (“KPPA”) (formerly known as Kentucky Retirement Systems (“KRS”)) was the “real plaintiff.” The AG intervened in that case and continues, in 20-CI-590, to pursue the case with the Trustee in a “real plaintiff” role. Discovery and motion practice will be affected by this difference. At trial, the evidence, argument and jury charge

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(including any comparative fault question) will be markedly different. The Tier 3 members/beneficiaries have interests different from the interests of “the Commonwealth, the body politic,” to which the AG owes his “primary obligation.” *Commonwealth ex rel. Hancock v. Paxton*, 516 S.W.2d 865, 868 (Ky. 1974). Second, the claims are not entirely the same. The central theory underlying this case — that the KPPA Board, as a whole and as the sole trustee of the KPPA trust funds committed breaches of trust, in collusion with the third-party defendants — is different from the theory underlying the AG’s case. Third, the relief is not the same. While both the Tier 3 Trust Plaintiffs and the AG seek to hold the Hedge Fund Sellers and other third-party Defendants liable, the different theories of the case may well result in different remedies.

II. Personal Jurisdiction

Several defendants contest personal jurisdiction, including Prisma/PAAMCO, Blackstone, and KKR. Plaintiffs allege that these defendants entered into business arrangements with a Kentucky entity and, through those arrangements, engaged in a pattern of intentional or reckless misrepresentation, which foreseeably caused significant financial losses to KPPA, a Kentucky entity, and harm to its members, citizens of Kentucky, to the benefit of these out-of-state defendants. *See* KRS 454.210(2)(a)(4)

In *Ford Motor Co. v. Montana Eighth Judicial District*, 141 S. Ct. 1017 (2021), a unanimous Supreme Court made clear that “minimal contacts” necessary for long arm jurisdiction are the aggregate of the defendants’ business and commercial contacts with the forum. Consistent with *Ford Motor*, courts have asserted personal jurisdiction over parent holding companies based on their subsidiaries or agents’ contacts with the forum state. *See, e.g., Acorn v. Household Int’l, Inc.*, 211 F. Supp. 2d 1160, 1165–67 (N.D. Cal. 2002). The

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detailed allegations in the Complaint as to the degree of control Kravis and Roberts, as Co-Chair/Co-CEOs of KKR, had and exercised over KKR and its wholly-owned subsidiaries, taken in combination with the documentary evidence demonstrating KKR's firm-wide strategy initiatives specifically in connection with the Trustee, are sufficient to make out a prima facie case of "transacting any business" through agents, i.e., Cook, Reddy, Rudzik and others. *See Daimler AG v. Bauman*, 571 U.S. 117, 135 n.13 (2014) ("Agency relationships, we have recognized, may be relevant to the existence of specific jurisdiction. ... [A] corporation can purposefully avail itself of a forum by directing its agents or distributors to take action there."); *see also Genpharm Inc. v. Pliva-Lachema a.s.*, 361 F. Supp. 2d 49, 58 (E.D.N.Y. 2005) ("sufficient contacts would exist if the Plaintiff's [agency] theory of jurisdiction is established by a preponderance of the evidence").

Personal Jurisdiction over the KKR parties and Prisma/PAAMCO has been pleaded and the Court believes there is ample evidence of Kentucky activities by the parties directly and through their agents. At the very least, the Tier 3 Plaintiffs are entitled to jurisdictional discovery, including depositions of Kravis, Roberts and other senior KKR executives before dismissal on this ground could be ripe for decision. Accordingly, the defendants that have raised the personal jurisdiction defense will not be deemed to have waived their right to reassert this defense if warranted by facts established in pretrial discovery.

III. Immunity

Qualified immunity "is immunity from tort liability afforded to public officers and employees for acts performed in the exercise of this discretionary functions[.]" *Yanero v. Davis*, 65 S.W.3d 510, 521 (Ky. 2001). Qualified immunity applies when (1) the state actor is performing a discretionary act or function; (2) in good faith; and (3) within the scope of

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the person's authority. *Id.* at 517. "An act is not necessarily 'discretionary' just because the officer performing it has some discretion with respect to the means or method to be employed." *Id.* at 522 (citations omitted). "Conversely, an officer or employee is afforded no immunity from tort liability for the negligent performance of a ministerial act, *i.e.*, one that requires only obedience to the orders of others, or when the officer's duty is absolute, certain, and imperative, involving merely execution of a specific act arising from fixed and designated facts." *Id.*

The Court does not believe the issue of qualified immunity to be ripe for review at this time. Without discovery, Defendants' assertion of qualified immunity cannot be adequately assessed as the Court is unable to determine, based solely on the pleadings before it, whether the acts at issue are discretionary. Therefore, the parties must engage in discovery before the Court can consider the issue of qualified immunity.

IV. Statute of Limitations

Claims for civil conspiracy have a one-year statute of limitations. KRS 413.140(1)(c) creates a one-year statute of limitations for conspiracy claims. The rule in Kentucky is that the statute of limitations for a conspiracy claim commences upon performance of the last overt act in compliance with the objective of the alleged conspiracy. *Dist. Union Loc. 227, Amalgamated Meat Cutters & Butcher Workmen of N. Am., AFL-CIO v. Fleischaker*, 384 S.W.2d 68, 72 (Ky. 1964). Furthermore, Kentucky recognizes the right of an alleged co-conspirator to "withdraw" from an alleged conspiracy. *See Warren v. Commonwealth*, 333 S.W.2d 766 (Ky. 1960).¹ "All statutes of limitations begin to run

¹ While Kentucky law is silent as to how a co-conspirator's withdrawal impacts the running of the statute of limitations for a conspiracy claim against him, other jurisdictions, including the United States Supreme Court, hold that a conspiracy claim accrues for limitations purposes upon an alleged co-conspirator's withdrawal from the conspiracy. *See, e.g., Smith v. United States*, 568 U.S. 106, 111 (2013) ("Withdrawal

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when the relevant cause of action accrues.” See *Lexington-Fayette Urban* *Abney*, 748 S.W. 2d 376, 378 (Ky. App. 1988). A civil conspiracy begins to run when the last overt act performed in compliance with the objective of the conspiracy has been accomplished.

The Court is convinced that Plaintiffs had enough information in 2017, 2018 and/or 2019 to diligently investigate the facts alleged in the former Mayberry action to determine whether such facts give rise to the conspiracy claims now asserted in this case.

The statute of limitations claim for a professional negligence is one year from the date the injury was or reasonably should have been discovered. KRS 413.245. Further, professional services, for purposes of KRS 413.245 means “any service rendered in a profession required to be licensed, administered and regulated as professions in the Commonwealth of Kentucky, except those professions governed by KRS 413.140.”

a. Ice Miller LLP

KRS 413.245 supports the dismissal of Ice Miller from the suit. Plaintiffs allege that, by late 2016, a public investigation exposed years of wrongdoing, directly leading to different individuals to file a highly publicized lawsuit in 2017. 413.245 applies a one-year limitations period for any “civil action, whether brought in tort or contract, arising out of any act or omission in rendering, or failing to render, professional services for others.” This limitations period applies to claims by an attorney’s clients and non-clients

also starts the clock running on the time within which the defendant may be prosecuted, and provides a complete defense when the withdrawal occurs beyond the applicable statute of limitation.” As noted in *Morton’s Market, Inc. v. Gustafso’s Dairy, Inc.*, 198 F.3d 823, 837 (11th Cir. 1999), “A conspirator who withdraws from the conspiracy is no longer a member of the conspiracy and the subsequent acts of the conspirators usually do not bind them.”

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alike, “without regard to the identity of the claimant.” *Seiller Waterman, LLC v. RLB Properties, Ltd.*, 610 S.W.3d 188, 205 (Ky. 2020).

This limitations period applies not only to malpractice claims, but also to all claims against a lawyer – including breach of fiduciary duty, fraud, civil conspiracy, and aiding and abetting breach of fiduciary duty. *See, e.g., Abel v. Austin*, 411 S.W.3d 728, 739 (Ky. 2013) (granting summary judgment after applying the one-year limitations period in KRS §413.245 to claims of fraud, misrepresentation, and breach of fiduciary duty against a lawyer because they all arose out of the rendition of professional services.)

This Court is convinced that all claims against Ice Miller are thus subject to a one-year limitations period. Each of the claims accrued well over a year before this suit was filed on August 23, 2021. Accordingly, Ice Miller LLP’s *Motion to Dismiss* is **GRANTED**.

b. Adam Tosh

To state a breach of fiduciary duty claim, a plaintiff must plead that: (1) a defendant owed a fiduciary duty; (2) the defendant breached that duty; and (3) the breach of that duty caused plaintiff injury. *See Seeger Enters., Inc. v. Town & Country Bank & Tr. Co.*, 518 S.W.3d 791, 795-96 (Ky. Ct. App. 2017). Plaintiffs have failed to state such a claim under either a theory of a direct claim against Mr. Tosh or on behalf of KPPA and its beneficiaries. First, Mr. Tosh did not owe the Plaintiffs a fiduciary duty. The end of a fiduciary relationship coincides with the “termination of actual responsibilities.” *Insight Kentucky Partners II, L.P. v. Preferred Auto. Servs., Inc.*, 514 S.W.3d 537, 546 (Ky. Ct. App. 2016) (quoting *Aero Drapery of Kentucky, Inc. v. Engdahl*, 507 S.W.2d 166, 170 (Ky. 1974)). Mr. Tosh left employment with KPPA in July 2010 and was replaced as CIO at least by July 20, 2010. Compl. ¶ 242. Mr. Tosh did not owe fiduciary duties to beneficiaries

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of KPPA once his employment ended, as he no longer had any “actual responsibilities” on behalf of KPPA.

A five-year statute of limitations applies to claims for breach of fiduciary duty and aiding and abetting breach of fiduciary duty. KRS 413.120(6); *see Middleton v. Sampey*, 522 S.W.3d 875, 878 (Ky. 2017) (breach of fiduciary duty claim); *Anderson v. Pine S. Cap., LLC*, 177 F. Supp. 2d 591, 604 (W.D. Ky. 2001) (claim for aiding and abetting breach of fiduciary duty). There is no applicable discovery rule or tolling doctrine that can pause the running of this limitations period. *Middleton*, 522 S.W.3d at 878.

Plaintiffs’ allegations show that Mr. Tosh left KPPA in July 2010, and they do not claim that he undertook any actions relevant to the fiduciary duty and aiding and abetting claims subsequent to his departure from KPPA. Accordingly, the claims against Mr. Tosh accrued at the latest in July 2010 and therefore were time-barred as of July 2015.

The claims against Tosh were filed in August 2021. The conspiracy claim against Tosh is barred by the one-year statute of limitations. Plaintiffs allege that Tosh retired from KPPA in July 2010 and allege that Tosh made himself scarce after his retirement, moving to Alaska. By this logic, Tosh abandoned the alleged conspiracy as of July 2010.

Plaintiffs must bring a conspiracy claim within one year after their cause of action accrues. That one-year clock generally runs after “the last overt act performed in compliance with the objective of the conspiracy has been accomplished.” *District Union Local 227 v. Fleischaker*, 384 S.W.2d 68, 72 (Ky. Ct. App. 1964). Plaintiffs fail to allege an overt act within the year before the Complaint was filed. The last alleged overt act in support of the 2011 conspiracy took place in September 2011, when KPPA made the final

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“Black Box” investments. The conspiracy claim against Tosh was filed well beyond the statute of limitations. Adam Tosh’s *Motion to Dismiss* is **GRANTED**.

c. David Eager

Claims for civil conspiracy have a one-year statute of limitation. Plaintiffs cannot toll the statute of limitations under a continuing violation doctrine, nor does the discovery rule apply to breach of fiduciary duty claims. *See Middleton v. Sampey*, 522 S.W.3d 875, 879 (Ky. Ct. App. 2017). Plaintiffs filed their complaint on August 19, 2021. The civil conspiracy claim must have accrued after August 19, 2020 in order to be actionable.

Further, the Executive Director does not make investment decisions. Pursuant to statute, the responsibility for the investment of plan assets resides with the Board of the KPPA. The Board has established an investment committee which is specifically charged with oversight and investment of plan assets. *See* KRS 61.650(b). As of August 2016, when he became Executive Director, Mr. Eager has not served on the KPPA Board or investment committee. The complaint fails to identify any acts taken by Mr. Eager within the statute of limitations that are actionable. For the reasons stated above, the claims of civil conspiracy against David Eager are dismissed.

d. Brent Aldridge

Aldridge was an employee of KPPA from 1991 until he became Director of Alternative Assets in 2004. He was named interim CIO on July 15, 2010, until T.J. Carlson was hired as CIO on November 1, 2010. Aldridge then returned to Director of Alternative Assets on December 1, 2010. While he was interim CIO, no decisions were made by the Board regarding the investments contained in Plaintiffs’ Complaint.

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KRS 413.140(1)(c) creates a one-year statute of limitations for conspiracy claims.

The Complaint alleges that Aldridge's tenure at KPPA ended in August of 2016. His retirement would necessarily create a withdrawal from any conspiracy. Under *Smith v. United States* and *Morton's Market, supra*, the one-year statute of limitation applicable to Plaintiff's conspiracy claim against Aldridge began running in August of 2016. The conspiracy claims asserted against Aldridge are dismissed as time-barred.

e. T. J. Carlson

Carlson was CIO of KPPA from February 2011 to November 2013 until he voluntarily resigned. (Complaint at ¶191). The rule in Kentucky is that the statute of limitation for a conspiracy claim commences upon performance of the last overt act in compliance with the objective of the alleged conspiracy. Carlson's tenure at KPPA ended in November 2013 when he voluntarily resigned his position to move to Texas. Under the holdings in *Smith v. United States* and *Morton's Market, supra*, the one-year statute of limitations applicable to Plaintiff's conspiracy claim against Carlson began running upon his withdrawal from the alleged conspiracy in November 2013. Thus, the conspiracy claim against Carlson asserted in August 2021 is dismissed.

f. William Thielen

The Complaint identified Thielen as having become the interim Executive Director in April of 2011 and serving as Executive Director from 2012 to 2016. During the relevant time period, as Executive Director of Kentucky Retirement Systems (now Kentucky Public Pension Authority), Thielen had no decision-making involvement or voice in investment decisions.

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For the same reasons as discussed in Aldridge and Carlson's Motions to Dismiss, the claims of civil conspiracy against William Thielen are dismissed.

g. David Peden

The Complaint against Peden is predicated upon a series of investment decisions made by the Board, including the decision to invest \$1.5 billion in "Black Boxes" in 2011, reinvest \$300 million in "Black Boxes" while withdrawing \$800 million from other "Black Boxes" in May, 2016. The Complaint was filed more than five years after the last of these investment decisions was made by the Board. The conspiracy claim is subject to a one-year period. Plaintiffs allege that Peden conspired with others to make a \$300 million investment in a "Black Box" in 2016; giving the Complaint the most liberal possible construction, Plaintiffs allege that as the Board's chief investment officer, Peden conspired with others to make a \$300 million investment in a "Black Box" in 2016. Even this conspiracy claim is time barred, because the alleged investment occurred in 2016 – more than one year before Plaintiffs commenced this lawsuit. Thus, the civil conspiracy claims against Peden are dismissed.

h. PRISMA/PAAMCO - Jane Buchan, Girish Reddy, and Michael Rudzik

Plaintiffs must allege that the Prisma/PAAMCO Defendants entered into "an unlawful/corrupt combination or agreement" with others "to do by some concerted action an unlawful act," *James v. Wilson*, 95 S.W.3d 875, 897 (Ky. App. 2002), and were "active, knowing participants" in the conspiracy. *Peoples Bank of Northern Ky., Inc. v. Crowe Chizek & Co. LLC*, 277 S.W.3d 255, 261 (Ky. App. 2008). The Complaint does not plead facts to support an inference that the Prisma/PAAMCO Defendants had "actual knowledge" that KPPA fiduciaries were breaching any duties or that they were "knowing

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participants” in any conspiracy. Prisma/PAAMCO Defendants did not perform any acts after August 19, 2020 – i.e., within one year before Plaintiffs filed their complaint. To that end, the claims of civil conspiracy against the Prisma/PAAMCO Defendants are dismissed.

i. R.V. Kuhns & Associates

The claims against RVK are time-barred. Tolling doctrines recognized by Kentucky law—such as equitable tolling—require plaintiffs to act diligently. *See, e.g., Williams v. Hawkins*, 594 S.W.3d 189, 193–94 (Ky. 2020) (“[I]n order to establish that equitable tolling is warranted, [the plaintiff] bears the burden of showing that: (1) she ‘has been pursuing [her] rights diligently, and (2) that some extraordinary circumstance stood in [her] way.’”). Here, Plaintiffs had notice of their potential claims by virtue of the public *Mayberry* complaint (and their counsel’s participation in that suit), and had no impediment to filing sooner. Their failure to act diligently forecloses the application of tolling doctrines.

Claims against RVK are subject to a one-year “professional services” statute of limitation under KRS 413.245. The Complaint does not allege that RVK had any relationship with KPPA within a year of the filing of the Complaint – or at any point after 2017. KRS 413.245 provides: “a civil action, whether brought in tort or contract, arising out of any act or omission in rendering, or failing to render, professional services for others shall be brought within one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been, discovered by the party injured...” Professional services, for purposes of KRS 413.245 means “any service rendered in a profession required to be licensed, administered and regulated as professions in the Commonwealth of Kentucky, except those professions governed by KRS 413.140.”

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All of the claims against RVK arise out of RVK's provision of investment advisory professional services to KPPA, and fall squarely within KRS 413.245. Similar to accounting, investment advising requires advanced knowledge and training sufficient to render it a profession. A "profession" connotes other vocations such as accounting, engineering and teaching, the admission to which requires higher education, special knowledge, and training. *Plaza Bottle Shop, Inc. v. Al Torstrick Ins. Agency, Inc.*, 712 S.W.2d 349, 351 (Ky. App. 1986). *See e.g. Matherly Land Surveying Inc. v. Gardiner Park Dev., LLC* 230 S.W.3d 586, 589-90 (Ky. 2007); *Old Mason's Home of Ky., Inc. v. Mitchell*, 892 S.W.3d 304, 306 (Ky. App. 1995).

Providing investment advice to public pension funds certainly requires special knowledge of investment markets and public pension systems. Like other professions in the cases cited above, RVK's profession requires advanced education, knowledge, and training and therefore the RVK parties are subject to the one-year "professional services" statute of limitations. Additionally, KRS 413.245 applies to all investment advisors, including those out-of-state advisors.²

RVK's contract terminated in 2017, and all of the allegations against RVK concern public events, with the most recent mention of RVK concerning the 2015 KRS Annual Report. RVK's study and disclosures occurred more than a decade before the filing of the complaint in this case. For these reasons, R.V. Kuhns & Associates' *Motion to Dismiss* is **GRANTED**.

² KRS 413.245 does not require the defendant to be licensed or registered by the Commonwealth, only that the profession is one that is licensed, administered and regulated in the Commonwealth. "[T]he Kentucky legislature and the Kentucky Supreme Court must have intended for section 413.245 to apply to all engineers, not just those licensed in the Commonwealth of Kentucky." *ISP Chemicals LLC v. Dutchland, Inc.*, No. 5:08-CV-153, 2010 WL 4225888, at *3 (W.D. Ky. Oct. 21, 2020).

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j. Cavanaugh Macdonald Consulting, LLC

Cavanaugh Macdonald Consulting, LLC (“CavMac”) is an actuary that was engaged by KPPA from 2006-2016. The services included provision of an annual actuarial valuation of the liabilities of the System’s different funds, provision of an annual letter and summary of valuation to be included in the System’s Comprehensive Annual Financial Report, and creation of experience reports compiled every five (5) years to serve as the basis of subsequent actuarial assumptions to be considered and adopted by the System and the Legislature.

Against CavMac, the Complaint asserts claims of negligence, breach of statutory duty, breach of other duty, including fiduciary, aiding and abetting, and civil conspiracy. All of these claims are barred by the applicable statutes of limitations.

The statute of limitations for a claim for professional negligence is one year from the date the injury was or reasonably should have been discovered. KRS 413.245. The statute of limitations for a claim for civil conspiracy is one year. KRS 413.140(1)(c). The statute of limitations for fraud and negligent misrepresentation is five years from the date the fraud is discovered. KRS 413.120(11). The statute of limitations for breach of statutory duty is five years. KRS 413.120(2). The statute of limitations for a breach of fiduciary duty is five years, with no allowance for discovery. *Middleton v. Sampey*, 522 S.W.3d 875, 878 (Ky. App. 2017) However, where the fiduciary duty arises from a professional relationship, the statute of limitations is one year. *Peoples Bank of N. Kentucky, Inc. v. Crowe Chizek & Co. LLC*, 277 S.W.3d 255, 266 (Ky. App. 2008).

Even giving Plaintiffs the most generous statute of limitations, the claims against CavMac started to run, at the latest, on July 21, 2010 when the highest authority for the

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System had actual knowledge of all relevant facts. Public record shows that by July 21, 2010, the Legislature received a clear report on the unfunded state of the System, was aware that the 7.75% Assumed Return was a “hoped-for” Assumed Return, was aware the Board was contemplating risky investments and was aware it was unlikely the System could invest its way out of the hole it was in. This Complaint was filed on August 18, 2021, more than five (5) years after CavMac’s contract terminated and more than ten (10) years after the System were on notice of all alleged facts that form the basis of any claim against CavMac. For these reasons, CavMac’s *Motion to Dismiss* is **GRANTED**.

k. Breach of Fiduciary Duty and Breach of Trust

A five-year limitation period applies to breach of fiduciary duty and breach of trust claims. KRS 413.120(2); *Middleton v. Sampey*, 522 S.W.3d 875, 878-79 (Ky. App. 2017) (applying five-year statutes for breach of fiduciary duty and breach of trust claims). However, Plaintiffs contend that KRS 413.160 applies and thus allows ten years to file “an action for relief not provided for by statute” and that tolling doctrines, such as adverse domination and equitable tolling, apply as well. Plaintiffs allege sufficient facts to defeat the remaining Motions to Dismiss insofar as there may be facts that have not yet been fully disclosed. Accordingly, Defendants’ remaining Motions to Dismiss will be denied to the extent that they rely on the five-year statute of limitations defense for breach of fiduciary duty and breach of trust claims. However, if appropriate, remaining Defendants may raise the statute of limitations defense by a motion for summary judgment after completion of discovery.

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CONCLUSION

WHEREFORE, Cavanaugh Macdonald Consulting, LLC’s *Motion to Dismiss* is **GRANTED**; R. V. Kuhns & Associates’ *Motion to Dismiss* is **GRANTED**; Ice Miller LLP’s *Motion to Dismiss* is **GRANTED**; Adam Tosh’s *Motion to Dismiss* is **GRANTED**. The following *Motions to Dismiss* are **GRANTED, in part, only** concerning the civil conspiracy claims: David Peden’s *Motion to Dismiss*; William Thielen’s *Motion to Dismiss*; David Eager’s *Motion to Dismiss*; T.J. Carlson’s *Motion to Dismiss*; Brent Aldridge’s *Motion to Dismiss*; PAAMCO Prisma, LLC, Jane Buchan, Prisma Capital Partners LP, Girish Reddy, and Michael Rudzik’s (collectively, “Prisma/PAAMCO Defendants”) *Motion to Dismiss*; all remaining aspects, outside of the civil conspiracy claims, are **DENIED** for the following: David Peden’s *Motion to Dismiss*; William Thielen’s *Motion to Dismiss*; David Eager’s *Motion to Dismiss*; T.J. Carlson’s *Motion to Dismiss*; Brent Aldridge’s *Motion to Dismiss*; PAAMCO Prisma, LLC, Jane Buchan, Prisma Capital Partners LP, Girish Reddy, and Michael Rudzik’s (collectively, “Prisma/PAAMCO Defendants”) *Motion to Dismiss*.

All remaining *Motions to Dismiss* are **DENIED**.

Only the following *Motions* are final and appealable: Cavanaugh Macdonald Consulting, LLC’s *Motion to Dismiss*; R. V. Kuhns & Associates’ *Motion to Dismiss*; Ice Miller LLP’s *Motion to Dismiss*; and Adam Tosh’s *Motion to Dismiss*. There is no just cause for delay.

SO ORDERED, this 1st day of May, 2024

The image shows a rectangular box containing an electronic signature. On the left is the official seal of the Commonwealth of Kentucky, featuring a figure with scales and the text 'COMMONWEALTH OF KENTUCKY' and 'COURT OF JUSTICE'. To the right of the seal is a handwritten signature in cursive that reads 'Thomas D. Wingate'. Below the signature, the text reads: '/s/ HON. THOMAS DAMSON WINGATE', 'electronically signed', and '5/1/2024 10:32:30 AM ET'.

THOMAS D. WINGATE

NOT ORIGINAL
21-CI-00645

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Judge, Franklin Circuit Court JEFF@WALSONLCM.CO

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